

AGREEMENT FOR JOINT USE OF PERCOLATION PONDS

THIS AGREEMENT is by and among the BEAUMONT-CHERRY VALLEY WATER DISTRICT ("DISTRICT"), SAN GORGONIO PASS WATER AGENCY ("AGENCY"), and RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("FLOOD CONTROL"), collectively hereinafter called "PARTIES".

RECITALS

- A. AGENCY has a contract with the State of California to import supplemental water from the State Water Project and other sources when available to the San Gorgonio Pass Area.
- B. AGENCY desires to recharge the Beaumont Groundwater Basin with supplemental water.
- C. AGENCY has identified existing spreading grounds in Edgar Canyon in the area of Little San Gorgonio Creek and Orchard Avenue as a possible recharge site.
- D. DISTRICT is the fee owner of the land containing said spreading grounds in the form of percolation ponds and operates extraction wells nearby said ponds.
- E. FLOOD CONTROL has an easement (recorded October 11, 1948 at Book 1018, Pages 372 through 376, inclusive, Records of Riverside County), granted by DISTRICT, to use certain lands including the area occupied by the percolation ponds for flood control and water conservation purposes.
- F. Subject to DISTRICT'S rights as the fee owner, FLOOD CONTROL operates and maintains the percolation ponds under the rights conferred by said easement for flood control and water conservation purposes including, but not limited to, retention of flood waters in the percolation ponds and the resulting groundwater recharge. Subject to FLOOD CONTROL'S rights under said easement, DISTRICT has the right to use its land pursuant to its authority as an Irrigation District duly formed and operating under the laws of the State of California for purposes including, but not limited to groundwater recharge.
- G. The proposed use of the percolation ponds for recharge of supplemental water by AGENCY is generally consistent with said existing uses.
- H. AGENCY, DISTRICT and FLOOD CONTROL desire that the percolation ponds be operated in a coordinated manner to allow recharge of supplemental water by AGENCY to maximize public benefit while preserving existing rights of DISTRICT and FLOOD CONTROL.
- I. AGENCY, DISTRICT and FLOOD CONTROL recognize and acknowledge that the capture and recharge for reasonable and beneficial use of local water should take precedence over the recharge of supplemental water at times when such

 operations would conflict, except in extraordinary circumstances as agreed to by the PARTIES.

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NOW, THEREFORE, AGENCY, DISTRICT and FLOOD CONTROL in consideration of the mutual promises as set forth herein, agree to the following:

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1. PLANS: AGENCY will prepare plans for the modification and improvement of the existing percolation ponds, to facilitate recharge of supplemental water, in cooperation and consultation with DISTRICT and FLOOD CONTROL pursuant to generally-accepted engineering standards and practices. AGENCY will be solely responsible for all environmental and regulatory permitting, design, construction and installation of any improvements to the percolation ponds required for recharge of supplemental water. The location of the ponds is shown in concept in blue on Exhibit "A" and more particularly described on Exhibit "B", both attached hereto.

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2. **REVIEW:** The plans prepared by AGENCY shall be subject to review and approval by DISTRICT and FLOOD CONTROL, which approval shall not be unreasonably withheld.

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3. RECHARGE: Subject to the rights of DISTRICT and FLOOD CONTROL as provided herein, AGENCY may recharge supplemental water into the percolation ponds upon mutual agreement of the PARTIES as to the timing and amounts of water to be delivered. Upon initial use of percolation ponds for recharge of supplemental water, AGENCY, at its sole expense shall accept responsibility for ordinary operation and maintenance of percolation ponds for recharge of both local and supplemental waters for the term of the Agreement. Said acceptance of the responsibility for maintenance and operation for recharge of local water shall only be effective unless or until DISTRICT and/or FLOOD CONTROL elect to exercise their rights to use the subject land and percolation ponds for local recharge purposes. Should there be extraordinary maintenance or repair costs they shall be allocated as set forth in Section 6 herein. AGENCY and FLOOD CONTROL shall not claim, or otherwise be entitled to, ownership of any water supply or water rights in local waters as a result of said recharge activities. DISTRICT and FLOOD CONTROL shall not claim or otherwise be entitled to ownership of any water supply or water rights in supplemental water imported by AGENCY.

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4. DISCONTINUE RECHARGE, LOCAL WATER RECHARGE PURPOSE: AGENCY shall immediately discontinue recharge of supplemental water upon receipt of notice by DISTRICT and FLOOD CONTROL that there is sufficient local flow in the Little San Gorgonio Creek to warrant use of percolation ponds to recharge said local flow; and further, AGENCY shall immediately initiate recharge of local flows until mutually agreed by the PARTIES that supplemental water recharge should be resumed. Said recharge of local flows shall take place unless or until DISTRICT and/or FLOOD CONTROL elect to exercise their rights to use the subject land and percolation ponds for local recharge and/or flood control purposes. AGENCY and FLOOD CONTROL shall not claim, or otherwise be entitled to, ownership of any water supply or water rights in local waters as a result of said recharge activities.

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- 6. MONITORING, MAINTENANCE, DAMAGE, COST ALLOCATION: The General Managers of the PARTIES, or their designees, shall comprise an Executive Committee to inspect the facilities on an annual basis, or more often as required by circumstances, to determine maintenance needs and the appropriate allocation of responsibility/cost of said maintenance needs. In the event the PARTIES are unable to agree on allocation of extraordinary maintenance or damage costs, they may agree to submit any matters in dispute to non-binding arbitration as provided in Section 10 herein.
- 7. SPREADING NOT REQUIRED: Nothing in this Agreement shall require AGENCY to deliver supplemental water to the ponds.
- 8. TERM: The initial term for this Agreement shall be for a period of ten (10) years from the date of execution, or until January 1, 2008, whichever is later. The initial term may be extended upon the written agreement of the PARTIES prior to expiration of the then current term.

In the event AGENCY does not exercise due diligence to commence construction and/or installation of the improvements within five (5) years from the date of execution of this Agreement, DISTRICT and/or FLOOD CONTROL shall have the option to terminate this Agreement upon thirty (30) days prior written notice to AGENCY. DISTRICT and FLOOD CONTROL shall not have this option in the event AGENCY'S failure to commence construction and/or installation within said period is due to the initiation of litigation (including environmental challenges), by a party other than AGENCY, that challenges and enjoins said construction and/or installation.

- 9. MONITORING AND REPORTS: AGENCY, at its sole expense, shall install and monitor flow meters to determine the amount of supplemental and local water delivered and recharged. AGENCY shall provide DISTRICT and FLOOD CONTROL a report on or before December 1st of each year detailing the amount of water of each class recharged during the previous water year (October 1 through September 30).
- 10. ARBITRATION: Any controversy between the PARTIES regarding the construction of improvements, application of this Agreement, and/or any claim arising out of this Agreement, may be submitted to non-binding arbitration upon the mutual agreement of the PARTIES pursuant to the rules of the American Arbitration Association.

11. ASSIGNMENT: This Agreement shall be binding upon the transferees, assignees, successors, and assigns of the parties hereto.

12. INDEMNITY, HOLD HARMLESS: AGENCY shall indemnify and hold harmless DISTRICT and FLOOD CONTROL and the officers, directors, employees, and authorized volunteers of DISTRICT and FLOOD CONTROL, from and against any damage, liability, or cost (including attorneys' fees and costs of defense) to the extent caused by AGENCY'S negligent acts, errors, or omissions in connection with activities under this Agreement, including subcontractors or others for whom AGENCY is legally liable. AGENCY'S obligation to indemnify and hold harmless shall not be restricted to available insurance proceeds.

FLOOD CONTROL shall indemnify and hold harmless DISTRICT and AGENCY and the officers, directors, employees, and authorized volunteers of DISTRICT and AGENCY, from and against any damage, liability, or cost (including attorneys' fees and costs of defense) to the extent caused by FLOOD CONTROL'S negligent acts, errors, or omissions in connection with activities under this Agreement. FLOOD CONTROL'S obligation to indemnify and hold harmless shall not be restricted to available insurance proceeds.

DISTRICT shall indemnify and hold harmless FLOOD CONTROL and AGENCY and the officers, directors, employees, and authorized volunteers of FLOOD CONTROL and AGENCY, from and against any damage, liability, or cost (including attorneys' fees and costs of defense) to the extent caused by DISTRICT'S negligent acts, errors, or omissions in connection with activities under this Agreement. DISTRICT'S obligation to indemnify and hold harmless shall not be restricted to available insurance proceeds.

- 13. INSURANCE: Each party agrees to carry \$1,000,000/\$2,000,000 (occurrence/general and products/completed operations aggregate) of commercial general liability coverage and each party agrees to give the other, its directors, officers, employees, or authorized volunteers insured status under its policy using ISO endorsement CG 2010, or equivalent, and to provide a certificate of insurance and additional insured endorsement. FLOOD CONTROL is self insured for legal liability and it is understood that said coverage will be equal to, or greater than, the amount identified in this Section 13.
- 14. This Agreement may be executed in counterparts, and shall become effective upon receipt by each of the PARTIES of two executed counterpart signature pages from each of the other PARTIES.

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1	IN WITNESS WHEREOF, the parties have executed this Agreement on JAN - 5 1999	
2	(date to be filled in by Clerk of the Board Riverside County Flood Control and Water	
3 4	RECOMMENDED FOR APPROVAL:	RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
5	Juil Fanne	By Brand - I
6	DAVID P. ZAPPE	Riverside County Flood Control and Water
7	General Manager-Chief Engineer	Riverside County Flood Control and Water Conservation District Board of Supervisors
8	APPROVED AS TO FORM:	ATTEST: JAN - 5 1999
9	WILLIAM C. KATZENSTEIN County Counsel	GERALD A. MALONEY Clerk of the Board
11	By Joe S. Coul	By J. L.
12	Deputy	Deputy
13	Dated: 11 18 98	(SEAL)
14		•
15		BEAUMONT-CHERRY VALLEY WATER DISTRICT
16		C:

BEAUMONT-CHERRY VALLEY

Signature

Printed Name

Title

(SFAL)

20 (SEAL)
21 SAN GORGONIO PASS WATER AGENCY
22 Signature

Printed Name
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Title (SEAL)

FJP:seb PC/54441

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IN WITNESS WHEREOF, the parties have executed this Agreement on

	2 (date to be filled in by Clerk of the Board of Supervisors of the	
	Riverside County Flood Control and Wat	ter Conservation District)
	RECOMMENDED FOR APPROVAL:	RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
	5	Ву
	6 DAVID P. ZAPPE General Manager-Chief Engineer 7	JIM VENABLE, Chairman Riverside County Flood Control and Water Conservation District Board of Supervisors
	APPROVED AS TO FORM:	ATTEST:
10	WILLIAM C. KATZENSTEIN	GERALD A. MALONEY Clerk of the Board
11	Ву	Ву
12	Denuty	Deputy
13	Dated:	
14		(SEAL)
15		BEAUMONT-CHERRY VALLEY WATER DISTRICT
		Hay McKensie
16		Signature
17		Gary McKenzie
18		Printed Name
19	,	President
20		Title (SEAL)
21		SAN GORGONIO PASS WATER AGENCY
22		Sim De Total
23		Signature
24		Stephen P. Stockton
25		Printed Name
26		General Manager/Chief Engineer
27		Title (SEAL)
28	FJP:seb	

FLOOD CONTROL WATER CONSERVATION DISTRICT AND SUBMITTAL COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FROM:

Chief Engineer

SUBMITTAL DATE:

January 5, 1999

SUBJECT:

Little San Gorgonio Creek Spreading Grounds Joint Use Agreement

Project No. 5-0-0040

RECOMMENDED MOTION:

Approve the joint use agreement between the District, the Beaumont-Cherry Valley Water District (BCVWD) and the San Gorgonio Pass Water Agency (Agency) which sets forth the terms and conditions by which the Little San Gorgonio Creek Spreading Grounds will be jointly utilized for emergency debris storage, percolation and recharge purposes and authorize the Chairman to execute the agreement documents on behalf of the District.

JUSTIFICATION:

See Page 2

FINANCIAL:

Agency will fund all improvement design and construction with no additional costs to District. Upon full implementation, District should be relieved from some of the future maintenance costs of spreading local waters.

DAVID P. ZAPPE

General Manager-Chief Engineer

C.E.O. RECOMMENDATION

APPROVE

FJP:DVA:bjp

County Executive Officer Signature

MINUTES OF THE FLOOD CONTROL & WATER CONSERVATION DISTRICT BOARD

On motion of Supervisor Buster, seconded by Supervisor Mullen and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes:

Buster, Tavaglione, Venable, Wilson and Mullen

Noes:

None

Absent:

None

Date:

January 5, 1999

XC:

Flood

Prev. Agn. ref.

Depts. Comments

 3^{rd}

Deputy

By:

AGEMDA NO.

M 118 (12/82)

FLOOD CONTROL AND WATER CONSERVATION DISTRICT COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

SUBMITTAL DATE: January 5, 1999

SUBJECT: Little San Gorgonio Creek Spreading Grounds Joint Use Agreement

Project No. 5-0-0040

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JUSTIFICATION:

The District operates and maintains percolation ponds on Little San Gorgonio Creek north of Orchard Avenue in Cherry Valley under easement rights for flood control and water conservation purposes granted by the BCVWD. The District recharges local waters in the ponds under these rights, and also uses the site for temporary debris storage during flood emergencies. A debris basin is planned for this location in the future.

The Agency has a contract with the State of California to import supplemental water from the State Water Project and other sources, and desires to recharge the Beaumont Groundwater Basin with supplemental imported water and has identified the District's existing percolation ponds as a possible recharge site. The proposed use of the percolation ponds for recharge of supplemental water by Agency is generally consistent with the existing uses. The District, BCVWD and Agency desire that the percolation ponds be operated in a coordinated manner to allow recharge of both local and supplemental waters to maximize public benefit while preserving existing rights of the District and BCVWD.

The proposed agreement will accomplish these objectives while relieving the District of the costs of spreading local waters which will be assumed by Agency.

The agreement has been executed by BCVWD and Agency and has been approved as to legal form by County Counsel.